Kelly A. Evans
Nevada Bar No. 7691
SNELL & WILMER L.L.P.
3800 Howard Hughes Parkway, Suite 1000
Las Vegas, NV 89109
Telephone (702) 784-5200
Facsimile (702) 784-5400

David H. Kramer (Admitted Pro Hac Vice)
William O'Callaghan (Admitted Pro Hac Vice)
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
650 Page Mill Road
Palo Alto, CA 94304-1050
Telephone (650) 493-9300
Facsimile (650) 493-6811

Attorneys for Defendant GOOGLE INC.

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BLAKE A. FIELD,

Plaintiff,

vs.

GOOGLE INC.,

Defendant.

AND RELATED COUNTERCLAIMS

No.: CV-S-04-0413-RCJ-GWF

DECLARATION OF WILLIAM O'CALLAGHAN IN SUPPORT OF GOOGLE'S MOTION FOR SUMMARY JUDGMENT

Snell & Wilmer L.L.P. LAW OFFICES

I, William O'Callaghan, declare as follows:

1. I am an attorney at Wilson Sonsini Goodrich & Rosati, counsel of record for defendant and counterclaimant Google, Inc. ("Google") in the above-referenced matters. I have personal knowledge as to the facts contained herein and could competently testify thereto.

2. Attached hereto as **Exhibit 1** is a true and correct copy of relevant excerpts from the June 9, 2005 deposition of Plaintiff Blake A. Field.

3. Attached hereto as **Exhibit 2** is a true and correct copy of relevant excerpts from Plaintiff's Answers To Interrogatories Of Defendant Google, Inc.

4. Attached hereto as **Exhibit 3** is a true and correct copy of relevant excerpts from Plaintiff's Response To Requests For Admission Of Defendant Google, Inc.

5. Attached hereto as **Exhibit 4** is a true and correct copy of a printout from http://www.robotstxt.org/wc/norobots.html, produced as G-000015 through G-000018.

6. Attached hereto as **Exhibit 5** is a true and correct copy of a printout from http://www.google.com/remove.html, produced as G-000010 through G-000013.

7. Attached hereto as **Exhibit 6** is a true and correct copy of a printout from http://www.google.com/webmasters/3.html, produced as G-000439 through G-000442.

8. Attached hereto as **Exhibit 7** is a true and correct copy of an April 16, 2004 letter from Michael S. Kwun of Google to Blake A. Field, produced as G-000389.

9. Attached hereto as **Exhibit 8** is a true and correct copy of a printout from FIELD 0001, containing a screen capture of Plaintiff's search for http://www.blakeswritings.com/Antiperspirant.html, produced by Plaintiff without bates-numbers.

10. Attached hereto as **Exhibit 9** is a true and correct copy of a printout of http://search.yahoo.com/search?p=www.blakeswritings.com&sm=Yahoo%21+Search&fr=FP-tab-web-t&toggle=1&cop=&ei=UTF-8, which presents results for a search for "www.blakeswritings.com" on the Yahoo! search engine (available at http://www.yahoo.com).

11. Attached hereto as **Exhibit 10** is a true and correct copy of a printout of http://216.109.125.130/search/cache?p=www.blakeswritings.com&sm=Yahoo%21+Search&tog

Snell & Wilmer L.L.P. LAW OFFICES

gle=1&ei=UTF-8&u=www.blakeswritings.com/BandT-Shirt.html&d=URgCMWFULb4H&icp=1&.intl=us, which is the Web page presented when I clicked on the "Cached" link for the second search result identified in Exhibit 10 (*e.g.*, Yahoo!'s cache for http://www.blakeswritings.com/BandT-Shirt.html).

12. Attached hereto as **Exhibit 11** is a true and correct copy of a printout of http://search.msn.com/results.aspx?q=www.blakeswritings.com&FORM=QBHP, which presents results for a search for "www.blakeswritings.com" on the MSN search engine (available at http://search.msn.com/).

13. Attached hereto as **Exhibit 12** is a true and correct copy of a printout of http://cc.msnscache.com/cache.aspx?q=2258275074290&lang=en-US&FORM=CVRE3, which is the Web page presented when I clicked on the "Cached" link for the third search result identified in Exhibit 10 (*e.g.*, MSN's cache for http://www.blakeswritings.com/Dogbait.html).

14. Attached hereto as **Exhibit 13** is a true and correct copy *Marvel Enter., Inc. v. NCSoft Corp.*, CV 04-9253-RGK (PLAx), (March 9, 2005 C.D. Cal.).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 23, 2005, at Palo Alto, California.

Wm O'Callaghan

William O'Callaghan

Snell & Wilmer L.L.P. LAW OFFICES

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing **DECLARATION OF WILLIAM O'CALLAGHAN IN SUPPORT OF GOOGLE'S MOTION FOR SUMMARY JUDGMENT** was served this 27 day of September, 2005, by placing same in the United States mail, postage prepaid, addressed to the following:

Blake A. Field
9805 Double Rock Drive
Las Vegas, NV 89134
Telephone (702) 373-1022
Pro Se Plaintiff

Judith B. Warren
An employee of Snell & Wilmer, L.L.P.

84973.1

Snell & Wilmer
L.L.P.
LAW OFFICES
3800 HOWARD HUGHES PARKWAY, SUITE 1000
LAS VEGAS, NEVADA 89109
(702)784-5200

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing DECLARATION OF WILLIAM O'CALLAGHAN IN SUPPORT OF GOOGLE INC.'S MOTION FOR SUMMARY JUDGMENT was served this 3 day of November, 2005, by placing same in the United States mail, postage prepaid, addressed to the following:

Blake A. Field
9805 Double Rock Drive
Las Vegas, NV 89134
Telephone (702) 373-1022
Pro Se Plaintiff

Judith B. Warren
An employee of Snell & Wilmer, L.L.P.

84973.1

Snell & Wilmer
L.L.P.
LAW OFFICES
3800 HOWARD HUGHES PARKWAY, SUITE 1000
LAS VEGAS, NEVADA 89109
(702)784-5200

CERTIFIED COPY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BLAKE A. FIELD, Plaintiff, vs. GOOGLE, INC., Defendant.	CASE NO. CV-S-04-0413

VIDEOTAPE DEPOSITION OF BLAKE A. FIELD

LAS VEGAS, NEVADA

THURSDAY, JUNE 9, 2005

REPORTED BY: CARRE LEWIS, CCR NO. 497

JOB NO. 1-34017

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the best of my recollection.

Q. So on or after January 20th, 2004 is when the site went live is the best of your recollection?

A. Yes.

Q. And when we are talking about after, do you know, was the site live by February 20th of 2004?

A. Yeah, I -- I believe it was certainly live by February 20, 2004.

Q. Okay. So within that month's time frame you believe the site went live?

A. Yeah.

Q. Would you say by the end of January, say, January 31st, 2004 the site was live? I'm just trying to get the range of --

A. Yeah. Yeah, I believe so.

Q. Okay. And when did you look at robots.txt?

A. It wasn't until sometime after the site went live. I think maybe the -- sometime in early February, mid February.

Q. And why did you look at robots.txt?

A. Because I had come to understand that there was a text file called robots.txt that one could use to ensure that crawler robots crawled one's site.

Q. How did you come to that understanding?

A. I believe I read it on the web on a tips page.

Q. So did you want robots to crawl on your web site?

A. I did.

Q. And so you went to robots.txt to find out how to instruct robots to crawl your web site?

A. Robots.txt itself didn't instruct me, but, yeah, I -- there was a -- there was a resource page which instructed one how to utilize robots.txt.

Q. Okay. Did you create a robots.txt file for the web site?

A. I did.

Q. When?

A. I don't recall the specific date that I did that. I believe it was sometime in early or mid February 2004.

Q. Why did you create a robots.txt file?

A. To ensure that my site would be crawled by the maximum number of crawlers so that it would be contained the maximum amount of search engines and reference material so that my site could have the maximum exposure possible that could come from automated crawling software.

Could we go off the record for a second?

Q. Did you want to take a break?

Q. Any others?
A. And these other things that start with meta.
Q. Okay. And aside from those that are shown on G-000092, were you aware of any other meta tags?
A. I believe that I was aware of certain other meta tags.
Q. What other meta tags were you aware of?
A. The meta tags that one could insert on one's page to -- I know where you are going with this. I was aware at the time of the meta tag that one can insert on each of one's pages that can specifically instruct Google not to cache one's page.
Q. How were you aware of meta tags that one could add to one's web pages that could specifically instruct Google not to cache one's web pages?
A. In my investigation of the Google cache mechanism, I think I had seen it before -- before that, long -- back in 2001, I think is when I became aware of -- of Google's cache and operators and things like that.
Q. How did you become of Google's cache in 2001?
A. I believe a friend had pointed it out.

don't -- no, I don't believe so.

Q. What works are you referring to that existed in December of 2003?

A. I believe that the -- I believe that For the Lotto existed, the Caddy, there are some others that are posted there now, but I don't recall specifically, that I can't recall.

Q. Okay. And so in December of 2003 you spent 10 to 15 hours investigating the Google cache with the idea that if you subsequently created a web site and Google cached pages from that web site, you would bring an action against Google; is that the idea?

A. If Google infringed on the copyrights relative to that site that, yes, indeed.

Q. And so you were investigating prior to creating a web site?

A. That's correct.

MR. O'CALLAGHAN: We need to take a tape break.

THE VIDEOGRAPHER: Off the video record at 11:48.

(Off of the record.)

THE VIDEOGRAPHER: This is the beginning of videotape number two in the continuing deposition of

A. Okay-doke.
Q. Did you prepare those answers?
A. I did.
Q. Okay. And if you can look at Request For Admission Number 4, does that refresh your recollection as to whether or not you were aware that a no-archive meta tag could be used to prevent Google from including a web page in the Google system cache at the time you created blakeswritings.com?
A. There was never any doubt, to my recollection.
Q. Okay. So you were aware of a no-archive meta tag that could be used to prevent Google from including a web page in a Google system cache at the time you created blakeswritings.com?
A. That's correct.
Q. Okay. Now, you knew of a process to remove web sites from the Google system cache when you created blakeswritings.com, didn't you?
A. I believe it did.
Q. And if you can look at your Response to Requests For Admission Number 1 in Exhibit 8, I believe that might refresh your recollection.
A. It does.

distinction between a crawler accessing a site and a search engine caching that site for distribution to others.

Q. Okay. How did you learn about the means to contact Google to request that the Google system cache remove a web site such as blakeswritings.com?

A. I believe it was buried somewhere on the Google site.

Q. So did you read that in connection with your investigation in December 2003?

A. I believe so, yes.

Q. Okay. But chose not to follow this process; isn't that correct?

A. Which process?

Q. The process of contacting Google and requesting that they not cache or allow cache copies of web pages from blakeswritings.com to be distributed?

A. That is correct.

Q. You also chose not to use the meta tag no-archive with respect to your web pages; isn't that correct?

A. Well, seeing as it is not my duty to speak, indeed, I did not.

Q. Okay. So you chose not to use the

no-archive meta tag on your web site; isn't that correct?

A. That's correct.

MR. O'CALLAGHAN: Mark this as the next exhibit, I believe it is Exhibit 9.

(Exhibit 9 marked.)

BY MR. O'CALLAGHAN:

Q. Handing you what's been marked as Defendants Exhibit 9, I will note for the record this is a printout from google.com/remove.html, Bates Number G-000010 through G-000013. If you'd take a minute to review these pages and let me know when you are ready?

A. I'm ready.

Q. Okay. Now, did you look at google.com/remove.html before creating your web site?

A. I do believe I did.

Q. So this was one of the things that you looked at in December of 2003?

A. Yes, I believe so.

Q. Okay. Do you see that Google identifies how to use a robots.txt file to prevent Google or other search engines from crawling your site under the heading Remove Your Web Site near the bottom of you the trouble. I believe that the home page had a hit counter on it and that the other pages did not.

Q. Okay. And so with respect to the web pages that were cached by Google that are at issue in the present litigation, they did not contain any technology which returned information to you, did they?

A. At the time they were in the cache, I don't believe they did.

Q. Okay. You didn't limit access to your work that you published on the web, did you?

A. How do you mean by "limit access"?

Q. You didn't restrict anyone from coming and looking at your information, did you?

A. Any Internet user who came to the site could view it.

Q. And that includes all bots as well; isn't that correct?

A. That's correct.

Q. When did you first publish your work, and when I say "your work," I'm referring to the 51 works at issue in the present litigation?

A. They were first published when they were put on the web when the site went live.

Q. And so your recollection is that's the end copyright owners to identify or protect copyrighted works and, (A), have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair and voluntary, multi-industry standards process, (B), are available to any person on reasonable and nondiscriminatory terms, and, (C), do not impose substantial costs on service providers or substantial burdens on their systems or networks."

Do you know of any such standard technical measures?

A. I don't.

Q. Okay. And so if you don't know of any such standard technical measures, wouldn't it follow, then, that you didn't implement any such standard technical measures on your web site?

A. That would follow.

Q. Now, when you set up blakeswritings.com, you wanted Google to index blakeswritings.com; isn't that right?

A. To index it, yes.

Q. Why?

A. Because Google is a search engine that's used by many people and I wanted to achieve the maximum exposure to my web site.

Q. Did you submit your web site to Google?
A. I did.
Q. How did you do that?
A. Using a submittal bar.
Q. And so it would be a bar in which you would input your URL and say, Please add me to Google?
A. Yes.
Q. When did you do that?
A. I don't specifically recall. It was shortly after the web site went live.
MR. O'CALLAGHAN: Mark this as the next exhibit.
(Exhibit 13 marked.)
BY MR. O'CALLAGHAN:
Q. Handing you a document that's been Bates -- marked Defendant's Exhibit 13. It is Bates labeled G-000014. On the top it says add your URL to Google. Please take a minute to review this document.
A. I have reviewed the document.
Q. Is this the type of thing that you -- the type of form that you filled out when you submitted your web site to Google to be indexed by Google?
A. No, I don't believe this is the -- this is the form that was used. Obviously this printout is

from May 11, 2005, and it is a different -- it appears to me to be a different form that was used than when I submitted my site.

Q. What appears to be different to you from the form that you used when you submitted your site?

A. I believe that there was only a URL to enter, and a button to click to submit it. I don't believe there was a section for comments and I don't believe there was an optional part there.

Q. Okay. Did you do anything else to try to get your web site indexed by Google?

A. Well, I'm -- I did a lot of things to try to get other -- every search engine that I could -- that I could think of to index the site. So --

Q. What did you do?

A. Well, I had some -- I contracted with -- I don't remember which company, for paid inclusion in certain searches; I submitted my site to any search engine that would take submittals that I could think of; I had the broadest possible reach on robots.txt; I utilized the Google AdWords program to have paid links, paid clicks for pertinent search results in Google.

Q. Anything else?

A. That's it.

guess every couple of few days, I get at least one or two hits from that, it would seem.

Q. When did you first use the Google search engine?

A. Oh, goodness. A long time ago, I don't know, maybe -- perhaps not long after it first started.

Q. So is it your recollection that you used it before 2000?

A. I don't know. I don't -- I don't know.

Q. How frequently do you use Google?

A. Presently?

Q. Yes.

A. Not frequently at all.

Q. How frequently did you use Google before you filed the present lawsuit?

A. I would say that I used it maybe for search engine needs probably a third of the time. One out of every three times I would use a search engine, I would use Google.

Q. And would that be true --

MR. O'CALLAGHAN: Can you hear me?

THE VIDEOGRAPHER: Yes.

MR. O'CALLAGHAN: Good, because my mic is not on.

Q. If you look at the second page, G-000002, you see there is a section there that's labeled Cached Links?
A. I see it.
Q. Can you review that and let me know if this is similar to what you reviewed in December of 2003?
A. I have looked at it, and I do believe it is similar. I can't say whether it is exactly the same, but it appears similar.
Q. Okay. Do you see the last paragraph there reads, "The cached link will be missing for sites that have not been indexed, as well as for sites whose owners have requested that we not cache their content"?
A. I do see that.
Q. Do you recall having a similar understanding when you investigated the Google cache in December of 2003?
A. When you ask "having a similar understanding," whether similar language was contained?
Q. Do you recall having an understanding that Google represented that a cached link will be missing for sites that have not been indexed as well as for sites whose owners have requested we not

cache their content in December of 2003?
A. Yes.
Q. So you are aware that Google provided users to cache copies of many pages before you developed your own web site?
A. That's correct.
Q. And you still sought to have your web site indexed by Google?
A. I sought to have my web site indexed by Google and indexed only.
Q. What do you mean "and indexed only"?
A. I mean solely for it to be included in the index.
Q. But you didn't use a no-archive meta tag, did you?
A. I did not.
Q. When did you first access the Google cache for the works from blakeswritings.com?
A. I don't recall specifically. I believe it was either February/March 2004.
Q. Did you make a screen shot?
A. Of the first time?
Q. Yeah.
A. I don't believe I did.
Q. How many times have you accessed the Google

cache for works on blakeswritings.com?

A. The works are no longer in the cache.

Q. Right. How many times did you access the Google cache for works -- for works from blakeswritings.com?

A. For everything in total?

Q. Yeah.

A. I don't know. Maybe each page cached I would say less than five times.

Q. Did you keep records?

A. Of each time I visited?

Q. Of each time you requested access to the Google cache version of a work from blakeswritings.com?

A. Other than screen shots, no.

Q. Did you make screen shots other than the ones that you have produced in connection with the present litigation?

A. I have not.

Q. So you made one set of screen shots of the web pages from blakeswritings.com that you received from the Google cache?

A. That's correct.

Q. Did you request access to where -- let me start over.

number of occurrences per work wasn't an issue.
Q. So you didn't care if one or a hundred thousand people requested access to the cache copy of your web site; is that correct?
A. Well, after the first infringement, the point became moot. So it wasn't an issue to me.
Q. You had established what you believe was infringement and that was good enough for you; is that correct?
A. That's correct.
MR. O'CALLAGHAN: Let's go off the record.
THE VIDEOGRAPHER: Off the record at 12:54.
(Off of the record for lunch recess.)
THE VIDEOGRAPHER: Back on the video record at 1:38.
MR. O'CALLAGHAN: Good afternoon, Mr. Field.
THE WITNESS: Howdy.
BY MR. O'CALLAGHAN:
Q. So you don't know if anyone other than you accessed the Google cache version of the works from blakeswritings.com, do you?
A. Objection. Calls for speculation.
No, I have no personal knowledge of any other person.

your page is relevant"?

A. I do see that.

Q. Do you agree with that?

A. I agree, yes.

Q. This is a benefit for web users, isn't it, the ability to find out why a particular page was turned up in response to a search request?

A. It may be a benefit to a particular user. I don't know the circumstances.

Q. Have you earned any money from licensing the works at issue of the present litigation?

A. I have not.

Q. Have you earned any money from the sale of the works at issue in the present litigation?

A. The sale of copies of the works?

Q. Yes.

A. No, I have not.

Q. Have you made any money from any other disposition of the works at issue in the present litigation?

A. I have made money through donations on my web site, but other than that, no.

Q. When you say donations on your web site, are you talking about donations through PayPal?

A. I am.

argumentative.

Further, the facts that were stated in the -- in that scenario you just stated are incorrect. So maybe we can take each fact section up to it. The answer to your question as is stands now is, that is incorrect.

Q. What is incorrect about my question?

A. I can't recall the exact sum of that question, so perhaps we could go through it.

Q. Okay. Let's start with you created each of these works in about 25 to 45 minutes prior to --

A. That's correct, per work.

Q. Right.

A. Okay.

Q. So you sent ever spent approximately 25 to 45 minutes per work?

A. That's correct.

Q. You created these works with the intent to put them on a web site?

A. That is correct.

Q. You intended to create this web site with these works in part so that you could challenge the legality of the Google cache?

A. That is correct.

Q. And you intended to seek $50,000 in damages

A. Desperately trying to locate Exhibit 2. I have finally located Exhibit 2.

Q. Okay. And if you look at the section headed the Google cache, it starts on page 2 of Exhibit 2 --

A. Yeah.

Q. -- when you refer to the Google cache, are you referring to the ability -- the portion of the Google web site that allows users to access Google's cached version of a particular web site?

A. Right, the Google cache feature of the Google web site.

Q. So you don't object to Google's initial copying of your web pages for purposes of creating the Google index, do you?

A. That's correct.

Q. And that's because the Google's initial copying of the web pages for purposes of creating the Google index is not infringing?

A. Google receives its copy as distributed from me, so Google is not in fact copying, it is requesting a copy from me.

Q. So when Google requests a copy from you and you provide the copy to Google, that's not infringing; is that correct?

A. That's my understanding, that's correct.

Q. So the only copy that you object to is a copy made when a user requests a copy of the cache version of a web site and downloads it from the Google server?

A. I want to I guess be very clear here. A lot of times copy is used as -- to encompass all of the rights of an author when one talks about a copyright law, and so I apologize for kind of getting off the subject of your question, but it is a reproduction and distribution and not merely making a copy.

But to answer your question, the objectionable act which encompasses the reproduction and distribution is when Google makes a copy and distributes that copy of the cache copy that it holds.

Q. So if a user never requested a copy of a web site, then there would be no infringement under your analysis; is that correct?

A. I don't believe that's -- that's fully correct because I believe merely offering those copies to the users is also likely an infringing activity as well.

Q. So it is your belief that there is

registered your works?

A. I intended to be prepared for the possibility, yes.

Q. Did you anticipate that you might sue Google when you created your works?

A. Again, I was prepared for the possibility of that.

MR. O'CALLAGHAN: Mark this as the next exhibit.

(Exhibit 18 marked.)

BY MR. O'CALLAGHAN:

Q. Handing you a document that was been marked Defendants Exhibit 18, it is Bates labeled G-000389. This is a letter from Michael Kwun of Google to you dated April 16th, 2004. Please take a moment to review it and let me know when you are ready.

A. I have reviewed it.

Q. Did you receive a copy of this letter on or about April 17th, 2004?

A. I did.

Q. In the first paragraph, Mr. Kwun indicates that Google first learned that you did not wish to have Google provide a cache copy of pages from your web site when Google obtained a copy of your Complaint.

think so.
Q. Are you aware of any other search engines that allow users to look at a cache copy of a web page?
A. I believe there are some others now that do it.
Q. Which ones?
A. You know, I'm not -- I'm not for certain. I think maybe Yahoo does it, maybe MSN, but I don't recall specifically whether that's the case. I think so.
Q. Have you checked to see if they cache blakeswritings.com?
A. I'm not for sure if I have. It seems like I had.
Q. Do you recall if they did?
A. Seems to be my recollection that they didn't, when I checked.
Q. So do you know when you checked Yahoo to see if it cached blakeswritings.com?
A. I don't recall last time I looked.
Q. Do you know when you checked MSN to see if it cached blakeswritings.com?
A. Likewise, I can't recall when I looked.
Q. But it is your recollection that Yahoo and

CERTIFICATE OF REPORTER

STATE OF NEVADA)
)SS: HENDERSON
COUNTY OF CLARK)

I, Carre Lewis, a duly commissioned and licensed Court Reporter, Clark County, State of Nevada, do hereby certify: That I reported the taking of the deposition of the witness, BLAKE A. FIELD, commencing on Thursday, June 9, 2005, at 9:33 a.m.

That prior to being examined, the witness was, by me, duly sworn to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of an attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS HEREOF, I have hereunto set my hand, in my office, in the County of Clark, State of Nevada, this 28th day of June, 2005.

Carre Lewis

CARRE LEWIS, CCR NO. 497

Blake A. Field
3750 Doris Place
Las Vegas, NV 89120
(702) 373-1022

Plaintiff Pro Se

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BLAKE A. FIELD, Plaintiff, v. GOOGLE, INC., Defendant. AND RELATED COUNTERCLAIMS	No. CV-S-04-0413-RCJ-LRL **PLAINTIFF'S ANSWERS TO INTERROGATORIES OF DEFENDANT GOOGLE, INC.**

INTERROGATORY NO. 1

IDENTIFY all PERSONS who were involved in the creation of the website at http:www.blakeswritings.com

ANSWER TO INTERROGATORY NO. 1

Blake A. Field.

INTERROGATORY NO. 2

DESCRIBE the specific contributions of each PERSON listed in the response to Interrogatory No. 1.

ANSWER TO INTERROGATORY NO. 2

Blake A. Field created the webpages and uploaded them onto the server.

INTERROGATORY NO. 3

IDENTIFY all PERSONS who were involved in the creation of the WORKS.

ANSWER TO INTERROGATORY NO. 3

Blake A. Field.

INTERROGATORY NO. 4

DESCRIBE the specific contributions of each PERSON listed in the response to Interrogatory No. 3.

ANSWER TO INTERROGATORY NO. 4

Blake A. Field authored the works.

INTERROGATORY NO. 5

IDENTIFY the date on which each of the WORKS was created

ANSWER TO INTERROGATORY NO. 5

The works were created over a three day period, January 4, 5, and 6, 2004. Plaintiff cannot recall the specific day of creation of each of the individual works within that period.

INTERROGATORY NO. 6

For each of the WORKS, state the total amount of time spent creating the work.

ANSWER TO INTERROGATORY NO. 6

The works were created over a three day period, January 4, 5, and 6, 2004. The exact amount of time spent authoring each work is unknown, however, it is estimated that on average each work took between 25 and 30 minutes to author.

INTERROGATORY NO. 7

State whether YOU contend that YOU lost any revenue due to any web caching of the WORKS by GOOGLE

ANSWER TO INTERROGATORY NO. 7

Plaintiff contends that Plaintiff lost revenue due to any web caching of the works by Google.

INTERROGATORY NO. 8

If the answer to Interrogatory No. 7 is affirmative, DESCRIBE the loss of revenue due to any web caching of the WORKS by GOOGLE, including the amount lost, the time period for the loss, and the URL of each of the cached page that you allege caused the loss.

ANSWER TO INTERROGATORY NO. 8

Plaintiff lost licensing revenue, as Google reproduced and distributed Plaintiff's works without paying a licensing fee to do so. The exact licensing arrangement and remuneration therefor that the parties may have entered into had Google properly licensed Plaintiff's works is unknown, therefore, the exact amount lost is unknown. The time period for the loss would be from the date Google without permission reproduced and distributed any of Plaintiff's works to internet users, through the date which Google removed Plaintiff's works from its cache.

The Urls of the cached pages which caused loss are as follows:

1. http://216.239.53.104/search?=cache:YDM5G3B9oMwJ:www.blakeswritings.com/TheCeilingFan.html+&hl=en&ie=UTF-8

2. http://216.239.53.104/search?=cache:ewYaOiZL99EJ:www.blakeswritings.com/TheDishwasher.html+&hl=en&ie=UTF-8

3. http://216.239.53.104/search?=cache:XunbLE7_BtUJ:www.blakeswritings.com/TheDoorPatch.html+&hl=en&ie=UTF-8

4. http://216.239.53.104/search?=cache:eCLsZEnSMuAJ:www.blakeswritings.com/TheDoorknob.html+&hl=en&ie=UTF-8

5. http://216.239.53.104/search?=cache:TLduRzwsGY4J:www.blakeswritings.com/TheHumidifier.html+&hl=en&ie=UTF-8

6. http://216.239.53.104/search?=cache:uewVuAcC2n8J:www.blakeswritings.com/TheMotorcycle.html+&hl=en&ie=UTF-8

7. http://216.239.53.104/search?=cache:egjFs8wf7tQJ:www.blakeswritings.com/ThePick.html+&hl=en&ie=UTF-8

8. http://216.239.53.104/search?=cache:Y2aSIiyEq-gJ:www.blakeswritings.com/TheScooter.html+&hl=en&ie=UTF-8

9. http://216.239.53.104/search?=cache:neilWOjU_7UJ:www.blakeswritings.com/TheSmokeDetector.html+&hl=en&ie=UTF-8

10. http://216.239.53.104/search?=cache:rXiv0zVURflJ:www.blakeswritings.com/TheVan.html+&hl=en&ie=UTF-8

11. http://216.239.53.104/search?=cache:B-MCrKO58acJ:www.blakeswritings.com/ToDoWithoutYou.html+&hl=en&ie=UTF-8

12. http://216.239.53.104/search?=cache:fZUWVbrdtO8J:www.blakeswritings.com/TwoFlashlights.html+&hl=en&ie=UTF-8

13. http://216.239.53.104/search?=cache:nT_n8HG3qccJ:www.blakeswritings.com/UsedBed.html+&hl=en&ie=UTF-8

14. http://216.239.53.104/search?=cache:249jIjE2720J:www.blakeswritings.com/WhichColaDoYouLike.html+&hl=en&ie=UTF-8

15. http://216.239.53.104/search?=cache:UdMmi4_nE6KJ:www.blakeswritings.com/Antiperspirant.html+&hl=en&ie=UTF-8

16. http://216.239.53.104/search?=cache:z1NUQj-h1BAJ:www.blakeswritings.com/WinterDied.html+&hl=en&ie=UTF-8

17. http://216.239.53.104/search?=cache:xAmvcyy_MNIJ:www.blakeswritings.com/WriteSomethingNice.html+&hl=en&ie=UTF-8

18. http://216.239.53.104/search?=cache:rtPNprYagfEJ:www.blakeswritings.com/BandT-Shirt.html+&hl=en&ie=UTF-8

19. http://216.239.53.104/search?=cache:vPdCKqXB4CoJ:www.blakeswritings.com/BassSlide.html+&hl=en&ie=UTF-8

20. http://216.239.53.104/search?=cache:X4EfpgX_tpsJ:www.blakeswritings.com/BoxOfMacaroni.html+&hl=en&ie=UTF-8

21. http://216.239.53.104/search?=cache:j235t8P6RSoJ:www.blakeswritings.com/BrokenHeadphones.html+&hl=en&ie=UTF-8

22. http://216.239.53.104/search?=cache:wHRDdniw71AJ:www.blakeswritings.com/ChewingGum.html+&hl=en&ie=UTF-8

23. http://216.239.53.104/search?=cache:eV3A0dUVkp8J:www.blakeswritings.com/Cribbage.htm+&hl=en&ie=UTF-8

24. http://216.239.53.104/search?=cache:rhk6sBUhLIUJ:www.blakeswritings.com/CrossingGuard.html+&hl=en&ie=UTF-8

25. http://216.239.53.104/search?=cache:IPOhvuvwMREJ:www.blakeswritings.com/DentedMercedes.html+&hl=en&ie=UTF-8

26. http://216.239.53.104/search?=cache:i36cd3wGdnUJ:www.blakeswritings.com/TheAlarmNextDoor.html+&hl=en&ie=UTF-8

27. http://216.239.53.104/search?=cache:YqcJehXxf9YJ:www.blakeswritings.com/TheAlarmClock.html+&hl=en&ie=UTF-8

28. http://216.239.53.104/search?=cache:9-Jh2vTpafuJ:www.blakeswritings.com/Sunglasses.html+&hl=en&ie=UTF-8

29. http://216.239.53.104/search?=cache:oG_p0-M9NX4J:www.blakeswritings.com/StyxDancing.html+&hl=en&ie=UTF-8

30. http://216.239.53.104/search?=cache:aJK-SjNVEBoJ:www.blakeswritings.com/StrawberryShampoo.html+&hl=en&ie=UTF-8

31. http://216.239.53.104/search?=cache:IFki_e9Op7YJ:www.blakeswritings.com/StopWhistling.html+&hl=en&ie=UTF-8

32. http://216.239.53.104/search?=cache:YoBl-AkwG5YJ:www.blakeswritings.com/SportsCommentators.html+&hl=en&ie=UTF-8

33. http://216.239.53.104/search?=cache:v8Y9GqTeDxwJ:www.blakeswritings.com/RustyKnives.html+&hl=en&ie=UTF-8

34. http://216.239.53.104/search?=cache:XrT5D6lmZFYJ:www.blakeswritings.com/RoomCleaning.html+&hl=en&ie=UTF-8

35. http://216.239.53.104/search?=cache:j1AG8dKAEPcJ:www.blakeswritings.com/OnlineDrips.html+&hl=en&ie=UTF-8

36. http://216.239.53.104/search?=cache:Wja756Lkc1EJ:www.blakeswritings.com/OilChange.html+&hl=en&ie=UTF-8

37. http://216.239.53.104/search?=cache:7nqplpksOEIJ:www.blakeswritings.com/Lotions.html+&hl=en&ie=UTF-8

38. http://216.239.53.104/search?=cache:2Qoact2gazkJ:www.blakeswritings.com/LeftFoot.html+&hl=en&ie=UTF-8

39. http://216.239.53.104/search?=cache:G-QCkRAmobUJ:www.blakeswritings.com/InkCartridge.html+&hl=en&ie=UTF-8

40. http://216.239.53.104/search?=cache:OesOhkWMnfgJ:www.blakeswritings.com/IBlameAnneMurray.html+&hl=en&ie=UTF-8

41. http://216.239.53.104/search?=cache:w9qeJ1-_VaAJ:www.blakeswritings.com/HikingToday.html+&hl=en&ie=UTF-8

42. http://216.239.53.104/search?=cache:mT1rSbpixOcJ:www.blakeswritings.com/HeaterHose.html+&hl=en&ie=UTF-8

43. http://216.239.53.104/search?=cache:5OPIRwcGcCEJ:www.blakeswritings.com/GoodTea.html+&hl=en&ie=UTF-8

44. http://216.239.53.104/search?=cache:X98VHBFJyx8J:www.blakeswritings.com/GoodBurritos.html+&hl=en&ie=UTF-8

45. http://216.239.53.104/search?=cache:RpjU86tVoIoJ:www.blakeswritings.com/FiresDoughnuts.html+&hl=en&ie=UTF-8

46. http://216.239.53.104/search?=cache:kxcBnzNZvkoJ:www.blakeswritings.com/FilthyComforter.html+&hl=en&ie=UTF-8

47. http://216.239.53.104/search?=cache:ftPu-maX4sEJ:www.blakeswritings.com/Eyedrops.html+&hl=en&ie=UTF-8

48. http://216.239.53.104/search?=cache:SJJbRvrfCSAJ:www.blakeswritings.com/EveryChristmas.html+&hl=en&ie=UTF-8

49. http://216.239.53.104/search?=cache:Taozmz0cGwEJ:www.blakeswritings.com/DriveDriveDrive.html+&hl=en&ie=UTF-8

50. http://216.239.53.104/search?=cache:dHzxmfcycXUJ:www.blakeswritings.com/Dogbait.html.+&hl=en&ie=UTF-8

INTERROGATORY NO. 9

State whether YOU contend that YOU suffered any loss of any rights in the WORKS

ANSWER TO INTERROGATORY NO. 9

Plaintiff contends that Plaintiff suffered loss of rights in the WORKS.

INTERROGATORY NO. 10

If the answer to Interrogatory No. 9 is affirmative, DESCRIBE each loss of any rights in the WORKS, including the amount lost, the time period of each loss, and specific rights in the WORKS you allege were harmed.

ANSWER TO INTERROGATORY NO. 10

With respect to all works, Plaintiff's exclusive right to reproduce and exclusive right to distribute the works were both infringed by Defendant during the time the works were present in the Google cache.

INTERROGATORY NO. 11

DESCRIBE all harm YOU allege to have suffered from any web caching of the WORKS by GOOGLE

ANSWER TO INTERROGATORY NO. 11

Google infringed upon Plaintiff's exclusive right to reproduce and distribute the works due to Google's web caching of Plaintiff's works.

INTERROGATORY NO. 12

IDENTIFY all PERSONS that YOU are aware of who have accessed one or more of the WORKS through the Google system cache.

ANSWER TO INTERROGATORY NO. 12

Plaintiff is aware of only Plaintiff accessing one or more of the works through the Google cache.

INTERROGATORY NO. 13

DESCRIBE the access restrictions, if any, on the website at http://www.blakeswritings.com

ANSWER TO INTERROGATORY NO. 13

None.

INTERROGATORY NO. 14

DESCRIBE the attempts made, if any, to increase the number of visits by Internet users to the website at http://www.blakeswritings.com

ANSWER TO INTERROGATORY NO. 14

After its creation, the website was submitted to a plethora of internet search engines, including Yahoo, Lycos, Google, Webcrawler, and Ask.com. The services of Positiontech were utilized to ensure inclusion in inktomi and its partners' search engines.

INTERROGATORY NO. 15

DESCRIBE all attempts made, if any, to have the WORKS included in the Google system cache

ANSWER TO INTERROGATORY NO. 15

None.

INTERROGATORY NO. 16

DESCRIBE all attempts to host online advertisements on the website at http://www.blakeswritings.com

ANSWER TO INTERROGATORY NO. 16

None.

INTERROGATORY NO. 17

DESCRIBE all COMMUNICATIONS with any third party that RELATE TO web caching of the WORKS

ANSWER TO INTERROGATORY NO. 17

Objection. This interrogatory is overbroad, as it seeks for Plaintiff to detail any communication, written or oral, in any way relating to any web cache of any of Plaintiff's works.

INTERROGATORY NO. 18

DESCRIBE all COMMUNICATIONS with any third party that RELATE TO web caches

ANSWER TO INTERROGATORY NO. 18

Objection. This interrogatory is overbroad, as it seeks for Plaintiff to detail any communication, written or oral, in any way relating to any web cache, at any time during Plaintiff's life.

INTERROGATORY NO. 19

DESCRIBE all COMMUNICATIONS with any third party that RELATE TO the operation of internet search engines.

ANSWER TO INTERROGATORY NO. 19

Objection. This interrogatory is overbroad, as it would require Plaintiff to detail any communication with any other person regarding any internet search engine at any and all points in Plaintiff's life. Further, this interrogatory calls for information which in no way is relevant to any claims of Plaintiff nor defenses of Defendant – particularly, Defendant's implied license and estoppel defenses focus solely on representations between the parties.

INTERROGATORY NO. 20

DESCRIBE all COMMUNICATIONS with any third party that RELATE TO the legal propriety of the Google system cache.

ANSWER TO INTERROGATORY NO. 20

Objection. This interrogatory is overbroad and over-burdensome as it would require Plaintiff to detail any and all communications with anyone at any time regarding the legal implications of the Google cache. Further, this interrogatory calls for information which in no way is relevant to any claims of Plaintiff nor defenses of Defendant – particularly, Defendant's implied license and estoppel defenses focus solely on representations between the parties.

INTERROGATORY NO. 21

If YOU contend that the Google system cache does not qualify for the safe harbor for service providers provided by 17 U.S.C. § 512(a), DESCRIBE all bases for that contention.

ANSWER TO INTERROGATORY NO. 21

Google does not meet the definition of service provider. Google does not operate a system through which transmissions occur. Even if it did meet the definition of service provider: (1) transmissions from the Google cache are not through any system or network operated by Google, rather, they originate with Google.(2) Google selects what material is in its cache, (3) Google selects the recipient of the cache material (4) storage in the cache is not intermediate or transient